

In re Patent Application of
GRIFFIN
Serial No. 10/784,858
Filed: **FEBRUARY 23, 2004**

REMARKS

Applicant thanks the Examiner for the careful and thorough examination of the present application. The arrow on the control line signal from DSP (1580) to the transmitter (1520) in Fig. 5 has been modified to correct an inadvertent error. The Examiner is respectfully requested to withdraw his rejections for the reasons set forth in the response presented below.

I. The Claimed Invention

The invention is directed to a cellular communications system. In particular, independent Claim 1, for example, recites a cellular communications system including a plurality of mobile cellular communications devices each associated with a respective user, and a cellular base station for wirelessly communicating with the plurality of mobile cellular communications devices. The cellular base station has a capacity associated therewith. The cellular communications system also includes a central station for determining available capacity of the cellular base station based upon active wireless communications with the mobile cellular communications devices. The cellular communications system further includes a subscription server for cooperating with the central station to provide non-real time subscription data to users on respective mobile cellular communications devices via the cellular base station when the determined available capacity thereof is greater than a threshold. The subscription server further cooperates with the central

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station to discontinue providing subscription data to respective mobile cellular communications devices based upon initiation of telephone calls.

Independent Claim 10 is directed to a similar communications system. Independent Claim 17 is directed to a related subscription server, and independent Claim 23 is directed to a related method.

II. The Claims are Patentable

The Examiner rejected the claims as being obvious over a three-way combination of Aarnio in view of Dolwin, in further view of Fry. Aarnio is directed to a system for providing on-line subscription services from a subscription server to a user of a mobile terminal through the Internet. The subscription server receives from the mobile terminal user-specific information relating to the user's mobile terminal capabilities, the user's preferences of products, and the user's financial information. The subscription server sends to the mobile terminal locally or remotely retrieved information related to a product based on the user-specific information. The subscription server receives from the mobile terminal a request indicating whether the user wishes to either cancel or purchase the product. The subscription server cancels the product when the user so indicates, and downloads the product to the mobile terminal when the user desires to purchase the product. See, e.g., paragraph 0009-0015 of Aarnio. The Examiner correctly recognized that Aarnio is

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silent as to when the determined available capacity of the wireless base station is greater than a threshold.

The Examiner then turned to Dolwin for this deficiency. Dolwin is directed to a mobile phone network including an operation and maintenance center (OMC) for collecting statistics from base stations to determine the extent of an available network capacity being used throughout a day. Upon identifying a time of low traffic capacity, streamed media data may be sent to a mobile communications device at that time over the mobile phone network. See, e.g., paragraph 0013 of Dolwin.

The Examiner properly recognized that even a selective combination of Aarnio and Dolwin fails to teach a subscription server cooperating with the central station to discontinue providing subscription data to the respective mobile cellular communication devices based upon an initiation of a telephone call. The Examiner cited to Fry to supply the noted deficiency.

Fry is directed to a multimedia messaging system for use in a communication network where multimedia message delivery can be suspended upon receipt of a command by an application server from a mobile terminal. Although the message delivery has been suspended, the session may be continued. Once the message delivery is suspended, it is possible for the user to start downloading another message, start a call or the like. See paragraph 0011. In other words, Fry clearly distinguishes a telephone call from a command by an application server from a mobile terminal.

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Fry does not disclose a subscription server cooperating with a central station to discontinue providing subscription data to respective mobile cellular communications devices based upon initiation of telephone calls, as in the claimed invention. In the claimed invention, the initiation of a telephone call will discontinue subscription data delivery. In contrast, in Fry a telephone call does not trigger message delivery suspension, but is merely a user option once the message delivery has been suspended.

Applicant further submits that the Examiner is using impermissible hindsight reconstruction in an attempt to use the specification as a template to selectively assemble disjoint pieces of three prior art references.

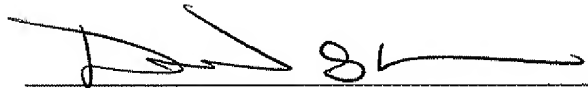
Accordingly, it is respectfully submitted that independent Claims 1, 10, 17, and 23 are patentable over prior art. In view of the patentability of the independent claims, it is submitted that their dependent claims, which recite yet further distinguishing features, are also patentable. These dependent claims require no further discussion herein.

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III. Conclusion

In view of the arguments presented above, it is submitted that all of the claims are patentable. Accordingly, a Notice of Allowance is respectfully requested in due course. If the Examiner determines any remaining informalities exist, he is encouraged to contact the undersigned attorney at the telephone number listed below.

Respectfully submitted,



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